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BEING

REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

## PRIVY COUNCIL REPORTS

### WONG THIN YIT v. MOHAMED ALI

**[P.C. (Lord Diplock, Lord Guest, Viscount Dilhorne, Lord Kilbrandon & Lord Salmon) October 24, 1973]**
**[Privy Council Appeal No. 12 of 1972]**

*Negligence — Appeal — Finding of fact by trial judge — Whether appellate court bound by finding of fact.*

*Privy Council — Practice — Concurrent findings of facts in lower courts.*

This was an appeal from the Federal Court of Malaysia ([1971] 2 M.L.J. 175) which dismissed the appeal of the appellant from the judgment of the High Court in Malaya in which the learned judge had held that the appellant was entirely to blame for a road accident resulting in injuries to the respondent.

**Held:** it is not the practice of the Judicial Committee of the Privy Council to review concurrent findings of facts in the lower courts. In this case although the appellant had tried to argue that the circumstances described in the finding of fact either do not amount to negligence or justify and require the court to find the respondent contributorily negligent, that argument was quite untenable and therefore the appeal must be dismissed.

PRIVY COUNCIL.

*John Archer* for the appellant.

*E. Cotran* for the respondent.

**Lord Diplock** (delivering oral judgment of the Board): This is an appeal from the Federal Court of Malaysia in a running-down action. That court dismissed an appeal from the judgment of the High Court in Malaya at Ipoh in which the learned judge awarded to the respondent, an infant, damages for negligence amounting to 32,000 dollars.

The respondent was one of three boys who, on the 21st February 1969, were walking along a road (the Degong/Teluk Anson Road) when, as was found as a fact by the learned judge, and this finding was upheld by the majority of the Federal Court, somewhere very near the left edge of the road — either on the grass verge or on the road — he was run into from the rear by the appellant on his motor cycle. It was broad daylight; there was no other traffic. That finding of fact was concurred in by the majority of the Federal Court and, needless to say, upon that finding the appellant was held to be 100 per cent negligent.

It is not the practice of this court to review concurrent findings of fact from courts in Malaysia. Counsel for the appellant has thus been driven to argue that the circumstances described in that finding of fact either do not amount to negligence or justify and require the court to find the respondent contributorily negligent. That argument in their Lordships' view is quite untenable.

Their Lordships will report to the Head of Malaysia their opinion that this appeal ought to be dismissed with costs.

*Appeal dismissed.*

Solicitors: *Wilson Freeman; Cooper, Bake, Fettes, Roche & Wade.*

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### MAHADEVAN v. ANANDARAJAN & ORS.

**[P.C. (Lord Diplock, Lord Guest, Viscount Dilhorne, Lord Kilbandron and Lord Salmon) November 22, 1973]**
**[Privy Council Appeal No. 22 of 1971]**

*Administrative Law — Expulsion of student from school — Natural justice — Person charged with making decision should act fairly.*

*Education — School discipline — Expulsion of student for misconduct — Education (School Discipline) Regulations, 1959, reg. 8.*

The appellant had been expelled from a school by the 1st respondent for alleged misconduct. The question that arose was whether the procedure adopted by the 1st respondent as headmaster in reaching his decision to expel the appellant was contrary to the rules of natural justice. In the High Court it had been held that the appellant had not been given an adequate opportunity to be heard as the respondent had not at the time of questioning the appellant informed him specifically that he would be expelled if he did not provide a satisfactory explanation. On appeal to the Federal Court it was held by a majority ([1971] 2 M.L.J. 8) reversing the decision of the High Court, that the procedure adopted by the headmaster was in accordance with the rules of natural justice. The appellant appealed to the Privy Council.

**Held:** (1) there was no substance in the contention that the rules of natural justice required the headmaster to tell the appellant specifically at the interview that he intended to expel him unless the appellant gave a satisfactory explanation of the misconduct. All that those rules require is that, in deciding whether to expel the appellant he should act fairly by letting him know what conduct was complained of and giving the appellant an opportunity of proferring any explanation or excuse he wished to part forward;

(2) in relation to such administrative matters as the expulsion of a pupil from a school it would be quite inappropriate to model the procedure on that of a criminal trial. All that natural justice requires is that the person charged with making the decision should act fairly. What is fair depends on the circumstances and is a matter of commonsense;